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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

MARK HILL,

Plaintiff and Appellant,

v.

MANUEL R. CASTELLANOS,

Defendant and Respondent.

2d Civil No. B211784
(Super. Ct. No. 1232372)
(Santa Barbara County)

Plaintiff Mark Hill appeals a money judgment rendered in favor of defendant Manuel R. Castellanos, Hill's former partner. Hill sued Castellanos for breach of contract and fraud involving the sale of Castellanos's partnership interest in a carpet business to him. Castellanos sued Hill for money owed on a promissory note involving that sale. The actions were consolidated in the trial court.

We conclude, among other things, that substantial evidence supports the trial court's express and implied findings that 1) Castellanos did not mislead Hill about the value of the business, 2) he did not intend to compete with Hill at the time he sold his interest, 3) the sales transaction was fair, 3) Hill had access to the financial records, and 4) Castellanos did not breach a fiduciary duty regarding the sale. The court correctly ruled that Castellanos did not have a contractual duty to transfer his contractor's license to the business. It properly awarded judgment to Castellanos for money Hill owed on the

promissory note. It then appropriately reduced that award by the damages it found for Castellanos's breach of a no-competition clause. We affirm.

FACTS

Hill, Castellanos and Isaias Suarez were partners in a carpet business. Hill and Suarez decided to purchase Castellanos's interest in this partnership.

On June 10, 2005, the partners signed a "Contract of Sale." It provided that Hill and Suarez would purchase Castellanos's 33 percent share of the business for \$330,000. The buyers were required to make an initial \$50,000 payment within three months, and thereafter pay monthly installments of \$2,000 on the remaining balance. The agreement included a promissory note for \$330,000, a provision of which provided that the "note shall at the option of any holder hereof be immediately due and payable upon the occurrence of any of the following: [¶] 1. Failure to make any payment due hereunder within 15 days of its due date."

On January 7, 2006, Hill, Castellanos and Suarez signed an agreement which provided that Castellanos was not required to transfer his contractor's license to the business. The parties agreed that this superseded a prior contract in 2004 where Castellanos had agreed to transfer his license.

In June 2006, Hill purchased Suarez's interest in the company and became the "sole owner."

In 2007, Hill sued Castellanos for fraud and breach of contract. Hill claimed that Castellanos: 1) misrepresented the value of the business at the time he sold his interest, 2) did not keep his promise to transfer his contractor's license to his (Hill's) company, and 3) violated the no-competition clause by competing with him. Castellanos filed an action against Hill alleging that he had defaulted on the promissory note. These two actions were consolidated and the case was tried by the court sitting without a jury.

At trial, Hill testified that he did not obtain an appraisal of the value of the business before he joined the partnership. He relied on Castellanos to determine its value because "[Castellanos] was my friend. [Hill] trusted him." He later discovered that Castellanos misled him. In 2006, the business "was not generating enough income" to

make the payments on the promissory note. Hill hired a private investigator and learned that Castellanos was competing with him. He decided to stop making payments to Castellanos. On cross-examination, Hill said he had 10 years of experience in "purchasing income stream properties." At the time he purchased Castellanos's interest, Hill "had complete access to every area of the business" and "paid the bills."

Castellanos testified that Hill knew the financial condition of the company before Hill bought his (Castellanos's) partnership interest. In addition to being a partner, Hill was the chief financial officer. Castellanos did not hide any information from him. Castellanos said the business was worth between \$500,000 and \$1 million, it had "accounts receivable" worth \$80,000, equipment worth \$300,000, and inventory worth between \$300,000 and \$400,000. After selling his interest, Castellanos was not in the carpet business and did not compete with Hill. He received two phone messages from a man who claimed he had a carpet job. Castellanos did not return the calls. He told his son Ricardo about it, and Ricardo returned the call.

Braden McKinley, a private investigator, testified that Hill requested him to conduct a "sting operation." He was to determine whether Castellanos was competing with him so that Hill could use that information as justification to "stop paying" Castellanos. As part of this operation, McKinley left a phone message for Castellanos about a carpet installation job. Ricardo called him back and said his father was not in the carpet business. Later Ricardo came to an address designated by McKinley and gave a bid on a carpet job. McKinley wanted to obtain a bid directly from Castellanos to use as evidence for Hill's case. He called again and spoke to Castellanos who refused to give a bid and said, "We don't need your business."

Kevin Daniel, Hill's accounting expert, testified that, based on the value of the inventory, the equipment, and the "intangible" asset of good will, the value of Castellanos's interest was \$36,000.

Suarez testified that he and Hill paid a fair price to buy Castellanos's partnership interest. He said that they determined the amount of their offer based on the monthly profits of the business.

The trial court found that 1) Hill did not prove that Castellanos committed fraud or misrepresentation and the value of the business when sold was consistent with the partners' "belief of the value of the business"; 2) Hill defaulted on the promissory note; and 3) Castellanos breached the no-competition clause. It calculated the damages for that breach at \$68,211. It deducted that amount from the amount Hill owed on the promissory note and entered judgment for Castellanos for \$209,284.88.

DISCUSSION

I. Misrepresentations and Concealment Regarding the Value of the Business

Hill contends that he was entitled to a judgment against Castellanos for fraud, misrepresentations and concealing the true value of the business. He claims that if he "had known the actual fair market value . . . he would not have made the agreement to purchase [Castellanos's] business interest" He argues that the trial court erred in not finding that Castellanos took an unfair advantage of him and breached his fiduciary duty as a partner. We disagree.

Hill claims there is evidence in the record that supports his position. But the issue is whether substantial evidence supports the judgment. We do not weigh the evidence or decide the credibility of the witnesses; that is a matter for the trial court. (*El Escorial Owners' Assn. v. DLC Plastering, Inc.* (2007) 154 Cal.App.4th 1337, 1358.) From the record we must draw all reasonable inferences in support of the judgment. (*Id.* at p. 1357.)

Partners have a fiduciary duty to act in good faith and not take unfair advantage of each other. (*Skone v. Quanco Farms* (1968) 261 Cal.App.2d 237, 241.) But "it would be incongruous to hold that a partner who consented to a partnership transaction, with full knowledge of all of the facts, may later complain and seek damages against the other partner simply because he benefited by the transaction." (*Ibid.*)

The trial court could reasonably infer that this sale was voluntary, that Hill was apprised of the facts, and that Castellanos did not take unfair advantage of Hill. Castellanos testified that Hill was the company's chief financial officer. He said Hill had "full access to every area of the company" and knew "everything there is to know about the

books." Hill knew the inventory, the cash flow and he collected the money from the employees. Castellanos said he did not hide or conceal any information from Hill.

Hill and Suarez decided to buy Castellanos's interest in the business. Suarez testified that the negotiations lasted a couple of days and the final price was "close to what [he and Hill] offered." It was lower than what Castellanos wanted. Suarez said that he and Hill had calculated the price based on the profits of the business, which had ranged between \$15,000 and \$18,000 a month.

Hill claims the transaction was unfair and the price paid for Castellanos's interest was unreasonable. But Suarez, his partner in this sale, testified that was not the case. Suarez said this was a voluntary transaction and they paid "a fair price" for Castellanos's interest in the company.

Hill argues that there is other evidence that the business was overvalued at the time of the sale. But there was also evidence from Castellanos to the contrary. We do not weigh the evidence or resolve factual disputes. The trial court resolved this evidentiary conflict against Hill. It noted, with the benefit of hindsight, that this may not have been a financially advantageous deal for Hill. But that, by itself, does not change the result. (*Skone v. Quanco Farms, supra*, 261 Cal.App.2d at p. 241.) The court said that, even if the value were lower than Hill anticipated, the agreed price was based on a belief in a value that was "shared by all the parties." In other words, all the partners believed that this transaction was fair at the critical time when this sale was completed. Hill has not shown error.

II. *Breach of the Agreement to Maintain a Contractor's License*

Hill contends the trial court should have entered judgment in his favor because Castellanos breached his duty to "transfer his contractor's license to the business." He claims Castellanos was bound by this agreement "even though he was no longer a partner in the business." We disagree.

"We interpret contracts to determine the intent of the parties." (*El Escorial Owner's Assn. v. DLC Plastering, Inc., supra*, 154 Cal.App.4th at p. 1359.) "The standard is 'what a reasonable person would believe' the parties intended." (*Ibid.*) It is well

established that parties to a prior contract may enter into a new one and extinguish the obligations of the former agreement. (*Davisson v. Faucher* (1951) 105 Cal.App.2d 445, 447.)

On September 15, 2004, Castellanos and Hill anticipated that they would form a new corporation with a third party. Consequently, they signed an agreement that Castellanos's license would be transferred to the new entity.

The trial court found that this obligation ended when Hill, Suarez and Castellanos entered into a new contract on January 7, 2006. This finding is supported by the record.

This new agreement states in relevant part, "As Mark N. Hill Wishes. He decided not to continue with the contract that we signed on 9/15/04 . . . over the contractor's license. . . . [T]hey don't want it anymore because they want to get their own [license] and I agree with this. Because even though when I agreed to this I was still involved in the company but when I decided to sell my part [I'm] not interested anymore." The agreement goes on to state that a monetary obligation on a promissory note would be cancelled.

Hill, Castellanos and Suarez signed this agreement. Though the grammar is poor, the language clearly states the parties' intent. All the partners agreed that Castellanos's license was not to be transferred to the business. This extinguished the obligation for the license transfer in the prior agreement. (*Davisson v. Faucher, supra*, 105 Cal.App.2d at p. 447.) Moreover, the trial court found, "There is no evidence of any job opportunities lost as a result of a failure to have the contractor's license transferred." Hill has not shown any error or prejudice.

III. *Breach of the No-Competition Clause*

The trial court found "no credible evidence was presented that proves at the time the [sale] agreement was made that CASTELLANOS intended to compete with the business." Hill disagrees. But the trial court decides the credibility of the witnesses. There is substantial evidence from Castellanos's testimony to support a finding that he did not intend to compete with the partnership business at the time he sold his interest. But the

court also found that "there is credible evidence that CASTELLANOS did compete with HILL *after* the agreement was entered into."

Hill claims that because the trial court found a breach of the no-competition clause, it erred in not ruling that he was excused from his obligation to pay the promissory note to Castellanos. We disagree.

Whether a party is excused from his or her contractual obligations because of a breach of the agreement by the other party to the contract "depends upon the gravity of the breach." (*Crofoot Lumber, Inc. v. Thompson* (1958) 163 Cal.App.2d 324, 332.) A major breach will excuse performance, but if it is a minor breach, he or she must perform his or her "part of the contract and seek compensation in damages." (*Integrated, Inc. v. Alec Fergusson Elec. Contractors* (1967) 250 Cal.App.2d 287, 296.) "[W]hether a breach is so material as to constitute cause for the injured party to terminate a contract is ordinarily a question for the trier of fact." (*Superior Motels, Inc. v. Rinn Motor Hotels, Inc.* (1987) 195 Cal.App.3d 1032, 1051-1052.)

Here the trial court found there was a minor breach. It said, "The competition that Mr. Hill proved at trial *was at best negligible*. I don't think it destroyed the goodwill of the business, resulting in a total breach of the agreement. The evidence of the competition consisted of one bid that was made to a private investigator hired by Mr. Hill. There is no evidence that jobs were lost as a result of this alleged competition, no evidence that customers were lost . . . , no evidence of open solicitation of business, business cards, ads, a facility of some sort being opened. No evidence showing any decrease in business because of any activities of Mr. Castellanos was submitted by Mr. Hill." (Italics added.) The court reasonably could infer that the evidence from McKinley's sting operation was not very convincing on this issue. Hill has not shown that the court erred by concluding that the breach was minor.

Moreover, the trial court awarded Hill damages of \$68,211 for this breach and then offset that amount from the obligation he owed to Castellanos on the promissory note. Hill claims that the damages for the breach should have been greater based on Daniel's opinions of the value of the goodwill of the business. But the court ultimately

rejected conclusions he reached. Hill suggests it was bound by Daniel's testimony. But the court exercised its discretion to assess the expert's credibility and to determine the weight to give his opinion. (*Chadock v. Cohn* (1979) 96 Cal.App.3d 205, 208.) Daniel was Hill's expert, and he conceded that he did not seek information from Suarez in reaching his conclusions. The conflict between Daniel's testimony and Suarez's and Castellanos's testimony was substantial. Hill has not shown that the court abused its discretion in not relying on Daniel and instead basing its findings on other evidence.

Hill contends that the trial court's use of a math-ratio formula to calculate the damage caused by Castellanos's breach was irrational. But Hill has not shown how this would change the result. The court initially used a formula based on Daniel's testimony to determine damages. But later it decided to reject Daniel's testimony. By doing this, it also implicitly rejected the formula it had used. It nevertheless determined that the damage figure of \$68,211 was appropriate. "The law will allow reasonably calculated damages even if the result is only an approximation" (*Gunter v. City of Stockton* (1976) 55 Cal.App.3d 131, 143.) Here, given the court's finding that the breach "was at best negligible," Hill has not shown how this award of damages constitutes error.

We have reviewed Hill's remaining contentions and conclude he has not shown reversible error.

The judgment is affirmed. Costs on appeal are awarded to respondent.

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GILBERT, P.J.

We concur:

YEGAN, J.

PERREN, J.

Arthur A. Garcia, Judge
Superior Court County of Santa Barbara

G. Scott Benker for Plaintiff and Appellant.

Brenneman, Juarez & Adam LLP, Mario A. Juarez for Defendant and
Respondent.